

Milford Board of Adjustment Minutes – August 21, 2003

Present: Len Harten, Chairman
K. Maher
K. Bauer
B. Levenson
R. Westergren

Shirley Carl, Admn. Asst.

Case # 21-03 Heather Nelson 33-35 Shady Lane – Map 22, Lot 2 – Variance from Article V,
Res. "A", Para. 5.021.A to convert a single-family residence back to a duplex

Motion by _____

Seconded by _____

Signed _____

1 Chairman Harten opened the meeting at 7:30 pm by stating that the hearing is held in
2 accordance with the TOM Zoning Ordinance and the NH Statutes.

3
4 The notice of hearing and abutter list was read into the record. Present – Holly Nelson, owner;
5 abutter – Janet O'Connell.

6
7 Heather Nelson made the presentation:

- 8
9 1. She provided the Board with a package that was done since the application came in.
10 (See file)
- 11 2. Shady Lane is located in Res. "A" and consists of 20 homes – 11 SFR on the left side of
12 the street and on the right side there are nine homes – four SFR and five duplexes.
- 13 3. Her home is colonial style with a garrison overhang. Driveway is on the right hand side
14 of the residence. Parking is located at the bottom of the driveway down the slope.
- 15 4. The home was built in 1982 as a duplex, it was grand fathered in 1986 as non-
16 conforming when duplexes were no longer allowed, only SFR residences were allowed.
- 17 5. In 1999, the previous owner applied for a building permit to convert the home into a SFR
18 by removing the yellow portion (See page 3) i.e. wall in the kitchen to create one
19 kitchen; on the second floor a doorway was constructed in-between two bedrooms to
20 create a walk-through; plumbing, electrical, telephone and cable wiring remains in tact as
21 in 1982. The interior has two of everything. The residence has two stairways going
22 upstairs, two exits to the basement, two exits from either side of the basement to the
23 back yard, two fireplaces – one in each living room, two sinks in the kitchen. We receive
24 two water and sewer bills and are charged at least the minimum fee for having two
25 water meters. In order for this charge to be deleted the plumbing would have to be
26 redone. We receive two electric bills, one for 33 and one for 35 Shady Lane. The
27 residence only has telephone service on one side otherwise we would have to incur
28 another charge for them to come out and rewire, which would be expensive.

29
30 Regarding the driveway, there is enough room for four vehicles and is presently dirt but does
31 anticipate paving in the spring. There are two entrances; one in the front and the other unit has
32 one on the side. She did purchase the residence as a single-family unit and has lived there for
33 one year. She didn't know at time of purchase that she couldn't turn it back into a duplex.

34
35 H. Nelson then addressed the criteria for a variance.

36
37 1. Could the variance be granted without diminishing the value of abutting property? She
38 stated that every abutter that abuts her also abuts a two-family. She referred to Page 3 of her
39 presentation, 37-39 abuts all SFRs as a result of the renovations that were done to her home in
40 1999. She doesn't think this abutter would have a problem because when he purchased his
41 home, her residence was a duplex. There would be internal changes and parking for four spaces
42 would be at the back.

43
44 2. Would granting the variance be of benefit to the public interest? In 1986 it was voted that
45 only single-family residences would be allowed in Res. "A". The Board felt it was in the best
46 interest of the Town to limit new construction to SFR. She feels that Shady Lane should be
47 brought back to the way it was. She spoke to the Assessing Office and was told that if she were
48 allowed to revert back to a two-family, the value of the home would increase. Discussion ensued
49 regarding tax dollars, bringing more children into Town, etc.

50
51 3. Hardship -

- 52 a. Her home is situated on a street with a row of duplexes, sandwiched in between two of
53 the five duplexes on the street, was constructed in 1982 for the purpose of being a duplex,

1 everything is in place to become a duplex again, yet the zoning restriction is interfering with
2 the reasonable use of the property. Her home does have a use but the use is in no way
3 reasonable. She further explained the set up of the house as it is as a SFR and how the
4 renovations would have to be made.

5
6 b. She is just here to ask the Board to grant her relief so she can use her property in the
7 capacity for which it was intended. The residence has been there for 21 years and for
8 the last four years, it has been a SFR.

9 c. It has been established that it won't affect the abutters, parking in lower driveway, not
10 visible from the street.

11 4. Returning the structure back to its original use would do substantial justice.

12 5. The spirit of the ordinance is to restrict future land use etc. She is asking the Board to
13 abolish what is taking place (see above explanations).

14
15 J. O'Connell, abutter mentioned that they are unable to park three cars and asked how are they
16 going to park four? Heather responded that they actually can fit there cars down there, the only
17 time they put a car in the street in the morning based on getting cars out in the morning and
18 who leaves first. She then took the opportunity to explain the situation.

19
20 Gary Daniels, Selectman - He left a copy of his testimony for the Board. In July of 2003 he was
21 notified regarding this issue and there were a couple of issues that concerned him. It appeared
22 she intended to purchase the house with the intent of turning it back into a duplex; also the fact
23 that she had been mislead regarding this matter as she didn't know about the ordinance. As a
24 result of a breach of good faith, Ms. Nelson finds herself trapped in a position where an
25 ordinance is keeping her from doing something she intended to do. He went on further but this
26 is in the file. He doesn't believe that restoring this residence to a duplex isn't a bad thing for the
27 Town.

28
29 K. Bauer wanted to go on record as saying that this breach of faith happens all the time and it
30 isn't something this Board can consider, we are a land use board and are considering what the
31 ordinance allows or doesn't allow and what kind of relief from the ordinance can be given. She
32 doesn't feel that this breach should sway the decision of the Board whatsoever. Chairman
33 Harten stated that our obligation is to right a wrong that may have done to Ms. Nelson. We are
34 here to interpret the ordinance as it stands. It was also stated by a member that ignorance of
35 the law isn't a defense. H. Nelson informed the Board that the person she purchased it from was
36 her mortgage broker and was working with her. She did admit that it is a buyer beware
37 situation. Kevin Lynch had spoken with the seller regarding this matter when he came in to
38 inquire about the matter of turning it back into a duplex.

39
40 The open portion of the meeting was closed at 8:00 PM.

41 It was decided that each member would have the opportunity to address each criterion.

42
43 1. Could the variance be granted without diminishing the value of abutting property?

44 K. Bauer responded in the affirmative because it is already a highly mixed neighborhood.

45 B. Levenson, R. Westergren, K. Maher and Chairman Harten were in agreement.

46
47 2. Would granting the variance be of benefit to the public interest?

48 B. Levenson doesn't see any public interest being served, this seems to be an issue of a
49 homeowner that was lead to believe something and appears to be driven by some financial
50 interest. There seems to be a very intent purpose of keeping it single family in Res. "A" and
51 allowing a duplex to go in there, even though there are some there, would be contrary. He
52 doesn't see any benefit to the public interest.

1 K. Maher stated that she doesn't see any adverse effect. It was a duplex for 17 years, there are
2 other duplexes in the neighborhood, most of the SFR are on the other side of the street. R.
3 Westergren was in agreement. K. Bauer agrees with K. Maher. We sometimes look at it and ask
4 if it would adversely affect the public interest. She feels this is a nebulous question as #4 is also.
5 Chairman Harten was also in agreement.
6

7 3. Hardship -

8 a. R. Westergren responded in the affirmative because of the unique setting that clearly
9 exists. B. Levenson brought up some discussion as to reasonable use. After discussion it
10 was decided that she definitely had a reasonable use as to it being a SFR but there are
11 unique circumstances (this residence needs major renovations to make it become a true
12 SFR). B. Levenson feels there is reasonable use whether it is appropriate or not. It was
13 purchased as a SFR believing it could be converted back to a duplex. It is listed in the
14 transaction as a SFR. K. Bauer stated that they a reasonable use of the property but it
15 interferes with the best potential, reasonable use because it was constructed as a duplex,
16 in a mixed neighborhood. She doesn't have any problem with this criteria. K. Maher was
17 in agreement with Chairman Harten feeling the same, the building itself has enough
18 uniqueness to it so that it does interfere with the owner using it, as they would like to.

19 b. K. Bauer referencing the general purpose in Res. "A". We already have five duplexes on
20 the same side of the street; it is already a duplex neighborhood. She doesn't think there
21 is a fair and substantial relationship, she thinks it is unfair to apply our duplex restrictions
22 in this case and we don't have a substantial relationship between the existing restrictions
23 and this case. B. Levenson felt in reverse, there might be duplexes there but the
24 ordinance states there won't be any more. If we are here to uphold the ordinance and
25 grant relief, if someone were to come in and want to construct a duplex, we wouldn't
26 allow it. K. Bauer felt that there is a lot of uniqueness that this is a perfect example of
27 why we have a ZBA to grant the request to something unique and special circumstances.
28 This is a case where the strictness of the Zoning Ordinance doesn't apply. R. Westergren
29 was in agreement with K. Bauer – there is no fair or unfair relationship. B. Levenson
30 brought up the issue of someone wanting to convert from a single to a duplex and a
31 situation of precedence. K. Bauer responded that if that were to happen, we would take
32 the case and look at the situation but it would be a completely different case. K. Maher
33 doesn't feel it is a fair relationship. This house was grand fathered in as a duplex and
34 other than for the last four years, it was a duplex. Chairman Harten was in agreement.
35 Referring to the question, it is a duplex section of Shady Lane. Discussion ensued
36 regarding the interior of the residence and what was done, i.e. two kitchens, stairways,
37 entrances, exits, etc.

38 c. B. Levenson stated he doesn't have a problem. K. Bauer responded that if this is called a
39 duplex but they put the wall and take away the doorway, it won't injure the public or
40 private rights of anyone. The rest of the Board was in agreement.
41

42 4. Variance does substantial justice. K. Maher referenced the ZBA Handbook, Page 16 – the
43 only guiding rule is that any loss to the individual that is not outweighed by a gain to the general
44 public is an injustice. She feels that substantial justice would be done because we would be
45 doing an injustice if we denied the request. This is a very unique situation. K. Bauer was in total
46 agreement with K. Maher. B. Levenson stated that the injustice to the TOM is that we are not
47 maintaining what our ordinance states. Chairman Harten stated that by denying the variance, we
48 would be doing an injustice in this situation.
49

50 5. Could the variance be granted without violating the spirit of the Ordinance?

51 B. Levenson responded in the negative. The spirit of the ordinance is Res. "A" SFR and we are
52 looking to keep it single-family. K. Bauer felt it would be an injustice because of the make-up of
53 the neighborhood at this time. She feels the intent of the ordinance has gone away a long time

1 ago. The ordinance changed in 1986 to only allow SFRs in the Res. "A" district. The
2 neighborhood situation and the character of the building – the original intent doesn't exist any
3 more. K. Maher was in total agreement and this is a perfect example of why the ZBA exists. R.
4 Westergren felt that we are a Board of Adjustment and we were created for this reason to grant
5 relief in cases such as this. Chairman Harten felt if this was a vacant piece of property with a
6 residence to be constructed on it they would be in violation. He feels the spirit of the ordinance
7 was to retain neighborhoods the way they were at the time of the institution of the ordinance.
8 This was a duplex, there are duplexes there – he doesn't believe there is any violation.
9

10 Vote as follows:

11 1. Could the variance be granted without diminishing the value of abutting property?

12 K. Maher – Yes R. Westergren – Yes B. Levenson – Yes

13 K. Bauer – Yes L. Harten - Yes

14
15 2. Would granting the variance be of benefit to the public interest?

16 K. Maher – Yes R. Westergren – Yes B. Levenson – No

17 K. Bauer – Yes L. Harten - Yes

18
19 3. Hardship

20 K. Maher – Yes R. Westergren – Yes B. Levenson – No

21 K. Bauer – Yes L. Harten - Yes

22
23 4. Would granting the variance do substantial justice?

24 K. Maher – Yes R. Westergren – Yes B. Levenson – No

25 K. Bauer – Yes L. Harten – Yes

26
27 5. Could the variance be granted without violating the spirit of the ordinance?

28 K. Maher – Yes R. Westergren – Yes B. Levenson – No

29 K. Bauer – Yes L. Harten - Yes

30
31 A motion was made by K. Bauer, seconded by R. Westergren, four affirmative votes and one
32 opposed.

33
34 There is a 30-day appeal period.